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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 109

CITY OF YONKERS AND JOHN W. TOOLEY, JR., AS
PRESIDENT OF COMMITTEE OF YONKERS COMMUTERS, ETC.,
Appellants,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE
COMMERCE COMMISSION AND THE NEW YORK
CENTRAL RAILROAD COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

STATEMENT AS TO JURISDICTION.

PAUL L. BLEAKLEY,
HORACE M. GRAY,
Counsel for Appellants.

INDEX.

SUBJECT INDEX.

	Page
Statement as to jurisdiction	1
Statutory provisions sustaining jurisdiction	2
Order involved	2
Date of the judgment and application for appeal	2
Nature of the case	3

TABLE OF CASES CITED.

<i>Colorado v. United States</i> , 271 U. S. 153	2
<i>Florida v. U. S.</i> , 282 U. S. 194	6
<i>Piedmont & Northern Ry. Co. v. Interstate Commerce Commission</i> , 286 U. S. 299	5
<i>Transit Commission v. U. S.</i> , 284 U. S. 360	2
<i>United States v. Baltimore & Ohio R. Co.</i> , 293 U. S. 454	6
<i>United States v. Chicago, North Shore & Milwaukee Railroad Co.</i> , 288 U. S. 1	5

STATUTES CITED.

Constitution of the United States:	
Article I, Sec. 8	2
Fifth Amendment	2
Tenth Amendment	2
Rules of Civil Procedure, Rule 52	6
United States Code, Title 28:	
Section 47	1, 2
Section 47a	1, 2
United States Code, Title 49:	
Section 1(1) (a-c inclusive)	2
Section 13	2
Section 20(a) (6)	2
Section 17(6)	2

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

PUBLIC SERVICE COMMISSION OF THE STATE OF
NEW YORK (STATE DIVISION, DEPARTMENT OF
PUBLIC SERVICE), CITY OF YONKERS, AND JOHN
W. TOOLEY, JR., AS PRESIDENT OF COMMITTEE OF YON-
KERS COMMUTERS, A VOLUNTARY UNINCORPORATED ASSOCIA-
TION COMPOSED OF MORE THAN SEVEN MEMBERS,

Plaintiffs,

against

UNITED STATES OF AMERICA AND THE NEW YORK
CENTRAL RAILROAD COMPANY,

Defendants.

Civil Action File No. 21-271

**JURISDICTIONAL STATEMENT UNDER RULE XII
OF THE RULES OF THE UNITED STATES SU-
PREME COURT.**

The following statement is made with respect to the
Jurisdiction of the United States Supreme Court to hear
the appeal in this action.

1. The statutory provisions believed to sustain the juris-
diction of the Court are Sections 47 and 47a of Title 28
of the United States Code.

2. The Validity of a Certificate and Order of the Interstate Commerce Commission dated March 20, 1943 in Finance Docket 13914, as extended by its orders dated April 19, 1943 and May 26, 1943 is involved. The Statutes of the United States involved are Sections 1 (18-22 inclusive) of Title 49 of the United States Code and Sections 1 (1) (a-c inclusive); 13; 20a (6), and 17 (6) of Title 49 of the United States Code; the provisions of the Constitution of the United States involved in the appeal are Article I, Section 8, and the Fifth and Tenth Amendments thereof.

3. The Judgment sought to be reviewed was rendered on June 10, 1943 and the petition for appeal therefrom is presented on June 11, 1943.

4. This action was instituted for the purpose of setting aside and annulling the aforesaid orders and certificate of the Interstate Commerce Commission and resulted in a final judgment dismissing plaintiff's complaint which said Judgment is of a nature which is expressly made reviewable by the United States Supreme Court by Sections 47 and 47A of Title 28 of the United States Code. (*Transit Commission v. United States*, 284 U. S. 360; *Colorado v. United States*, 271 U. S. 153.

5. The questions involved in the proposed appeal are substantial in that:

(a) *By reason of the following facts the railroad line which the Interstate Commerce Commission has authorized to be abandoned is a suburban or interurban electric railway not operated as a part or parts of a general railroad system of transportation and consequently the Interstate Commerce Commission has no jurisdiction whatever to pass upon the question of its abandonment (Section 1 (22)) of Title 49 of the United States Code:*

The said application of defendant railroad company to the Interstate Commerce Commission related to the abandonment of service upon a line of electric railway extending generally in a northerly and southerly direction between Getty Square, Yonkers, N. Y., and Sedgwick Avenue, New York City, N. Y., including the abandonment and dismantling of the tracks and electrical and other structures used for the operation of said line between Getty Square, Yonkers, and Van Cortlandt Park Junction, New York City, a distance of 3.1 miles, and the abandonment and dismantling of the electrical structures used for the operation of said line between Van Cortlandt Park Junction, New York City, and Sedgwick Avenue, New York City, a distance of 4.7 miles.

At a point on said electric line 3.1 miles from Getty Square, Yonkers, is the aforesaid junction, known as Van Cortlandt Park Junction, where the tracks of said electric railway connect with tracks also used by the so-called Putnam Division of defendant railroad company between Van Cortlandt Park Junction and Sedgwick Avenue.

The so-called Putnam Division of defendant railroad company is a steam operated line of railway which, after passing northerly over the common trackage used with said electric railway between Sedgwick Avenue and Van Cortlandt Park Junction, proceeds generally in a northeasterly direction as far as Brewster, N. Y., and said Putnam Division carries both passenger and freight traffic.

The so-called Putnam Division of defendant railroad company, north or northeasterly from Van Cortlandt Park Junction, is not electrified, and the electric cars and trains used on said electric line cannot proceed over the Putnam Division northerly or northeasterly from Van Cortlandt Park Junction.

The portion of the electric line from Van Cortlandt Park Junction to Getty Square, Yonkers, used standard gauge

tracks, but the bridges thereon will not support a locomotive drawn train and the steam trains used on the Putnam Division cannot be operated over said portion of the electric line.

Except for said track connection at Van Cortlandt Park Junction for the purpose of using the same trackage for the electric trains of said electric line and for the steam trains of the Putnam Division (between Van Cortlandt Park Junction and Sedgwick Avenue) said electric line has no physical connections whatever for the use of scheduled train service with any other line of railroad operated by the defendant railroad company or by any other railroad company or with any general steam railroad system of transportation.

There are four passenger stations on said electric line within the City of Yonkers, namely: Getty Square, Park Hill, Lowerre and Caryl.

No direct train service is provided by defendant railroad company from any of said stations in the City of Yonkers over the Putnam Division operated by steam northerly or northeasterly of Van Cortlandt Park Junction.

No direct train service is provided by defendant railway company from any part of the Putnam Division operated by steam northerly or northeasterly of Van Cortlandt Park Junction to any of said stations in the City of Yonkers.

Said electric line was built for the purpose of developing suburban business between the City of Yonkers and the City of New York.

Said electric line does not use locomotives, but uses a so-called MU (multiple unit) car which is somewhat in the nature of a trolley car and provides space for carrying passengers as well as supplying motive power.

The trains used on said electric line are comprised of two, three or four cars.

Said electric line carries upwards of 600 passengers each way, daily.

Said electric line is essentially local, operating between the City of Yonkers and the City of New York, and being wholly within the corporate limits of said cities and wholly within the State of New York, and extending for a total distance of 7.8 miles between its northerly terminus at Getty Square, Yonkers, and its southerly terminus at Sedgwick Avenue, New York City.

Said electric line is fundamentally a passenger carrier, is devoted for the most part to commutation service and carries no freight whatever.

There is no evidence that said electric line is engaged in the carriage of interstate commerce to any extent whatever.

The abandonment or continuance of said electric line would not affect or result in any substantial change in the operation of the Putnam Division of defendant railroad company by the use of steam power.

Said electric line is not operated as a part or parts of a general steam railroad system of transportation.

Piedmont & Northern Ry. Co. v. Interstate Commerce Commission, 286 U. S. 299;

United States v. Chicago, North Shore & Milwaukee Railroad Co., 288 U. S. 1, 9-10.

(b) The District Court erred in failing to find and decide that the order of the Interstate Commerce Commission was wholly void and should be set aside because of the lack of basic or essential findings with respect to the jurisdictional question as to whether or not the line between Getty Square, Yonkers and Sedgwick Avenue, New York City, is a suburban or interurban electric railway not operated as a part

or parts of the general steam railroad system of transportation.

(*Florida v. United States*, 282 U. S. 194;

United States v. Baltimore & Ohio R. Co., 293 U. S. 454):

(c) The District Court erred in failing to make any findings of fact and conclusions of law with respect to the issues presented in this action and in deciding and determining that "no findings of fact by us are necessary or appropriate under the circumstances." (Rule 52 of F. R. C. P.)

(d) The District Court erred in finding and deciding that the Interstate Commerce Commission was not required by law to allow plaintiffs a full hearing and that its denial of a further hearing could not be attacked before the District Court.

(e) The District Court erred in failing to find and decide that the plaintiffs were denied a fair and adequate hearing by the Interstate Commerce Commission by reason of the denial of plaintiffs' applications for a further hearing or rehearing sought for the purpose of introducing evidence of materially changed conditions relating to facts found by the Commission as the basis for its determination and for the purpose of introducing newly discovered evidence which was not reasonably discoverable at the time of the original hearing before the Commission by the exercise of due diligence.

(f) The District Court erred in failing to find and decide that the procedure followed by the Interstate Commerce Commission as disclosed upon the trial of this action constitutes a violation of the due process clause of the constitution, said practice being for the Commission to communicate with the War Department with respect to steel scrap and secondhand rails in the absence of the other parties, and with no opportunity to cross-examine or to exclude irrelevant facts.

(g) The District Court erred in failing to find and decide that the reception and consideration of the letter of April 30, 1943 from Robert Moses constituted a violation of plaintiffs' rights to a fair and open hearing, in that said letter was received and considered by the Commission without copies of same having been transmitted to the other parties interested in the proceeding before the Commission in violation of the rules of the Interstate Commerce Commission governing the receipt and consideration by it of such documents.

(h) The District Court erred in failing to find and decide that the Public Service Commission of the State of New York possesses exclusive jurisdiction with respect to the proposed discontinuance of the four stations on said electric line in the City of Yonkers, New York, and with respect to the proposed abandonment of service over said electric line between Getty Square, Yonkers and Sedgwick Avenue, New York City.

(i) The District Court erred in failing to find and decide that the findings made by the Interstate Commerce Commission were insufficient to sustain the conclusion that continued operation of the so-called Yonkers branch would constitute an undue burden upon interstate commerce and upon defendant, The New York Central Railroad Company.

(j) The District Court erred in failing to find and decide that, under the circumstances presented, the estimated annual loss which the Commission found would result from continued operation of said Yonkers branch in the sum of \$56,914, could not as a matter of law constitute an undue burden upon interstate commerce and that the conclusion of the Commission in that respect was arbitrary and capricious.

(k) The District Court otherwise erred as more fully appears in the assignment of errors filed in this action.

Dated June 11, 1943.

PAUL L. BLEAKLEY,
*Corporation Counsel,
Solicitor for the City of Yonkers.*

HORACE M. GRAY,
*Solicitor for John W. Tooley, Jr.,
President of the Committee of
Yonkers Commuters.*

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